



JUDICIARY COMMITTEE

MEETING PACKET

Wednesday, January 25, 2006

9:30 a.m. – 12:00 p.m.

**Morris Hall
(17 HOB)**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Judiciary Committee

Start Date and Time: Wednesday, January 25, 2006 09:30 am

End Date and Time: Wednesday, January 25, 2006 12:00 pm

Location: Morris Hall (17 HOB)

Duration: 2.50 hrs

Consideration of the following proposed committee bill(s):

PCB JU 06-02 -- Extraordinary Vote to Amend Constitution to Increase or Impose Taxes, Fees, or Significant Financial Impact

Consideration of the following bill(s):

HJR 39 Limitations on Assessments of Residential and Commercial Property by Farkas

HB 139 Trespass by Mahon

HB 145 Apportionment of Damages in Civil Actions by Brown

Workshop on the appropriate scope of the Florida Constitution:

James R. Eddy, Former Member of the Florida House of Representatives, Chairman of the Drafting Committee of the Joint House & Senate Committee on the Constitution (1968)

Talbot "Sandy" D'Alemberte, Chairman, Florida Constitution Revision Commission (1978), President Emeritus of Florida State University

Robert F. Williams, Associate Director of the Center for State Constitutional Studies, Distinguished Professor of Law at Rutgers University-Camden

NOTICE FINALIZED on 01/13/2006 11:26 by Williams.Tanesha



Florida House of Representatives

Judiciary Committee

Allan G. Bense
Speaker

David Simmons
Chair

COMMITTEE ON JUDICIARY

Morris Hall (17 HOB)

January 25, 2006

9:30 a.m. – 12:00 p.m.

Agenda

1. **Call to order**
2. **Roll call**
3. **Welcome and opening remarks**

Representative David Simmons, Chair

4. **Consideration of the following proposed committee bill:**

PCB JU 06-02	Judiciary	Extraordinary Vote to Amend Constitution to Increase or Impose Taxes, Fees, or Significant Financial Impact
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5. **Consideration of the following bills:**

<u>Bill</u>	<u>Sponsor(s)</u>	<u>Title</u>
HJR 39	Farkas	Limitations on Assessments of Residential and Commercial Property
HB 139	Mahon	Trespass
HB 145	Brown	Apportionment of Damages in Civil Actions

6. **Workshop on the appropriate scope of the Florida Constitution**



7. Closing remarks

Representative David Simmons, Chair

8. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JU 06-02 Extraordinary Vote to Amend Constitution to Increase or Impose Taxes, Fees, or Significant Financial Impact
SPONSOR(S): Judiciary Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee		Thomas 	Hogge 
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The joint resolution proposes changes to Section 7 of Article XI of the Florida Constitution, relating to amendments or revisions. The joint resolution provides that the existing two-thirds vote required for voters to approve any constitutional amendment *imposing* a new state tax or fee be expanded to include any constitutional amendment or revision *increasing* an existing state tax or fee. The joint resolution incorporates a definition of "existing State tax or fee" substantially similar to the current definition found in the constitution; that is, it is defined as "any tax or fee that produces revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is in effect at the time of the election at which the proposed amendment or revision is considered."

The joint resolution also requires that any proposed amendment or revision, regardless of the source of the proposal, that imposes a significant financial impact on state government in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the General Revenue Fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year prior to the election in which such proposed amendment or revision is considered, must pass by at least two-thirds of those electors voting in the election in which such proposal was considered. Based on the FY 2005-06 budget, a significant financial impact would be any amount greater than approximately \$53 million. As a result, proposed amendments or revisions requiring spending of less than \$53 million (based on current year General Revenue levels) or a revenue reduction resulting from a proposal to reduce state taxes would not be subject to the extraordinary vote requirement.

The joint resolution does not appear to have any fiscal impact on state or local government other than those costs related to placing the joint resolution on the ballot and publishing required notices. The Department of State estimates non-recurring publication costs of approximately \$37,000 for FY 2006-07.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect on January 2, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – the nature of this amendment, if adopted by the voters, would make it harder to pass unfunded mandates in the constitution that would then have to be funded by the Legislature with higher taxes or cuts in services in other areas.

Expand Individual Freedom - by increasing the vote necessary to gain approval for proposals that increase a state tax or fee or that impose a significant financial impact on the state, the joint resolution, if approved by the voters, would make it more difficult to amend the Florida Constitution.

B. EFFECT OF PROPOSED CHANGES:

Revision or Amendment to the Constitution

Amendments to Florida's Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizen's initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.¹ Depending on the method, all proposed amendments or revisions to the constitution must be submitted to the electors at the next general election 1) held more than ninety days after the joint resolution, 2) 180 days after the report of the Constitutional Revision Commission or Taxation Budget Reform Commission, or 3) for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election is to be held.²

A proposed constitutional amendment or revision is adopted upon approval of a majority of electors voting on the proposal.³ However, a new State tax or fee proposed by constitutional amendment or revision must be adopted by at least two-thirds of those voting in the election in which such amendment is considered.⁴ Below is a list of the approval percentages of some constitutional amendments in the past that might have required a two-thirds vote had this joint resolution been law.

TITLE	SOURCE	YEAR	APPROVAL PERCENTAGE
High Speed Rail	Initiative	2000	52.7%
Class Size	Initiative	2002	52.4%
Voluntary Pre-Kindergarten	Initiative	2002	59.2%
Article V – Local Funding of State Courts	Revision Commission	1998	56.9%

Section 5, Article XI, of Florida's Constitution was amended in 2002 requiring the Legislature to provide a statement to the voters regarding the probable financial impact of any amendment proposed by initiative. In response, the Legislature created the Financial Impact Estimating Conference to review, analyze, and estimate the financial impact of amendments.⁵

¹ See Art. XI, ss. 1-4 & 6, Fla. Const.

² See Art. XI, ss. 2, 5, and 6, Fla. Const.

³ See Art. XI, s. 5(e), Fla. Const.

⁴ See Art. XI, s. 7, Fla. Const.

⁵ See s. 100.371, F.S.

Effect of Joint Resolution

The joint resolution proposes changes to Section 7 of Article XI of the Florida Constitution, relating to amendments or revisions. The joint resolution provides that the existing two-thirds vote required for voters to approve any constitutional amendment or revision *imposing* a new state tax or fee be expanded to include any constitutional amendment or revision *increasing* an existing state tax or fee. The joint resolution incorporates a definition of "existing State tax or fee" substantially similar to the current definition found in the constitution; that is, it is defined as "any tax or fee that produces revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is in effect at the time of the election at which the proposed amendment or revision is considered."

The joint resolution also requires that any proposed amendment or revision, regardless of the source of the proposal, that imposes a significant financial impact on state government in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the General Revenue Fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year prior to the election in which such proposed amendment or revision is considered, must pass by at least two-thirds of those electors voting in the election in which such proposal was considered. Based on the FY 2005-06 budget, a significant financial impact would be any amount greater than approximately \$53 million. As a result, proposed amendments or revisions requiring spending of less than \$53 million (based on current year General Revenue levels) or a revenue reduction resulting from a proposal to reduce state taxes would not be subject to the extraordinary vote requirement.

The joint resolution further provides that the determination of whether a proposed amendment or revision imposes a significant financial impact on state government will be made and certified in accordance with general law. The joint resolution also deletes obsolete language in this section of the state constitution relating to items on the November 8, 1994 ballot.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect January 2, 2007.⁶

Appearance on the Ballot

If enacted, the proposed constitutional amendment will appear on the November 2006 ballot as follows:

TWO-THIRDS VOTE FOR AMENDMENT INCREASING STATE TAX OR FEE OR IMPOSING A SIGNIFICANT FINANCIAL IMPACT.— Under this measure proposing to amend the State Constitution, a proposed amendment or revision to the State Constitution that increases an existing state tax or fee would have to be approved by at least two-thirds of those voters voting in the election in which the amendment or revision is considered. For the purposes of this measure, "existing state tax or fee" means any tax or fee that produces revenue subject to lump-sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, if that tax or fee is in effect at the time of the election when the proposed amendment or revision is considered. This measure would also require that a proposed amendment or revision to the State Constitution that would impose a significant financial impact on state government must be approved by at least two-thirds of those voters voting in the election in which the amendment or revision is considered. For the purposes of this measure, "significant financial impact" means a financial impact to the state

⁶ Art. XI, s. 5(e), Fla. Const., provides: "If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision."

in any state fiscal year prior to and including the first state fiscal year of full implementation, including requiring the Legislature to increase taxes or fees in order to maintain the state budget at existing revenues and expenditures, in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the State general revenue fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year prior to the election in which such proposed amendment or revision is considered. The determination of whether a proposed amendment or revision imposes a significant financial impact on state government would be made and certified in accordance with general law. This measure adds to an existing provision of the Florida Constitution, passed by Florida voters in 1996, that currently applies the same two-thirds vote requirement only to a proposed amendment that imposes a new state tax or fee. All other proposed amendments or revisions presently must be approved by only a simple majority of those voting on the proposal. The measure also makes conforming changes in this section of the State Constitution and repeals obsolete provisions relating to items on the November 8, 1994, ballot.

C. SECTION DIRECTORY:

The legislation is a joint resolution proposing a constitutional amendment and, therefore, does not contain bill sections. The joint resolution proposes to amend Section 7 of Article XI of the Florida Constitution relating to amendments and revisions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not appear to have any impact on state revenues.

2. Expenditures:

Non-Recurring

FY 2006-07

Department Of State, Division of Elections

Publication Costs

\$37,000 (General Revenue)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have any impact on local government revenues.

2. Expenditures:

The joint resolution does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

While this proposal does not have a direct economic impact on the private sector, requiring a higher voting threshold for proposed amendments and revisions that increase a state tax or fee or impose a significant financial impact on state government may affect the likelihood of success of future proposals. See Effect of Proposed Changes, Section I.B. of this analysis, for voting results on past amendments that might have been affected had this joint resolution been in effect at the time of their respective elections.

D. FISCAL COMMENTS:

The Florida Constitution requires publication of a proposed amendment or revision to the constitution in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held.⁷ The Division of Elections with the Department of State estimates that the non-recurring cost of compliance would be approximately \$37,000 in FY 2006-07.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision relates only to general bills and therefore would not apply to this joint resolution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The joint resolution does not raise the need for rules or rulemaking authority or direct an agency to adopt rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Amendments or revisions to the Florida Constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.⁸ Passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.⁹ Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.¹⁰

A similar proposal to this joint resolution passed the full House of Representatives in the 2005 legislative session, but was never considered by the full Senate. Last year's proposal differed in that it applied to constitutional amendments or revisions that increased local taxes and fees, as well as to those that increased state taxes or fees and those that imposed a significant financial impact on state or local governments. This joint resolution only applies to constitutional amendments or revisions that increase state taxes or fees and those that impose a significant financial impact on state government. Last year's proposal passed unanimously out of the Judiciary Committee and the Justice Council, and by a 9 to 1 vote in the Ethics and Elections Committee.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

⁷ See Art. XI, s. 5(c), Fla. Const.

⁸ See Art. XI, s. 1, Fla. Const.

⁹ See Art. XI, s. 5(a), Fla. Const. The 2006 general election is on November 7, 2006.

¹⁰ See Art. XI, s. 5(c), Fla. Const.

House Joint Resolution

A joint resolution proposing an amendment to Section 7 of Article XI of the State Constitution, relating to tax or fee limitations; requiring that a proposed amendment or revision to the State Constitution that increases an existing state tax or fee must be approved by at least two-thirds of those voters voting in the election in which such amendment or revision is considered; providing that the phrase "existing State tax or fee" means any tax or fee producing revenue subject to lump sum or other appropriation by the Legislature, either for the state general revenue fund or any trust fund, which tax or fee is in effect at the time of the election when the proposed amendment or revision is considered; requiring that a proposed amendment or revision to the State Constitution that imposes a significant financial impact on state government be approved by at least two-thirds of those voters voting in the election in which such amendment or revision is considered; providing that the phrase "significant financial impact" means a financial impact to the state in any state fiscal year prior to and including the first state fiscal year of full implementation, including requiring the Legislature to increase taxes or fees in order to maintain the state budget at existing revenues and expenditures, in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the State general revenue fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year

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prior to the election in which such proposed amendment or
revision is considered; providing that the determination
of whether a proposed amendment or revision imposes a
significant financial impact on state government will be
made and certified in accordance with general law;
deleting obsolete provisions.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 7 of Article XI of
the State Constitution is agreed to and shall be submitted to the
electors of this state for approval or rejection at the next
general election or at an earlier special election specifically
authorized by law for that purpose:

ARTICLE XI

AMENDMENTS

SECTION 7. Tax, or fee, or significant financial impact
limitation.--Notwithstanding Article X, Section 12(d) of this
constitution:

(a) No amendment or revision to this constitution that
imposes a new State tax or fee shall become effective ~~be imposed~~
~~on or after November 8, 1994 by any amendment to this~~
~~constitution~~ unless the proposed amendment or revision is
approved by not fewer than two-thirds of the voters voting in the
election in which such proposed amendment or revision is
considered. For purposes of this subsection ~~section~~, the phrase
"new State tax or fee" shall mean any tax or fee that ~~which~~ would
produce revenue subject to lump sum or other appropriation by the
Legislature, either for the State general revenue fund or any

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trust fund, which tax or fee is not in effect on November 7, 1994.
~~including without limitation such taxes and fees as are the~~
~~subject of proposed constitutional amendments appearing on the~~
~~ballot on November 8, 1994. This section shall apply to proposed~~
~~constitutional amendments relating to State taxes or fees which~~
~~appear on the November 8, 1994 ballot, or later ballots, and Any~~
such proposed amendment or revision that ~~which~~ fails to gain the
two-thirds vote required by this subsection hereby shall be null,
void, and without effect.

(b) No amendment or revision to this constitution that
increases an existing State tax or fee shall become effective
unless the proposed amendment or revision is approved by not
fewer than two-thirds of the voters voting in the election in
which such proposed amendment or revision is considered. For
purposes of this subsection, the phrase "existing State tax or
fee" shall mean any tax or fee that produces revenue subject to
lump sum or other appropriation by the Legislature, either for
the State general revenue fund or any trust fund, which tax or
fee is in effect at the time of the election at which the
proposed amendment or revision is considered. Any such proposed
amendment or revision that fails to gain the two-thirds vote
required by this subsection shall be null, void, and without
effect.

(c) No amendment or revision to this constitution that
imposes a significant financial impact on state government shall
become effective unless the proposed amendment or revision is
approved by not fewer than two-thirds of the voters voting in the
election in which such proposed amendment or revision is
considered. For purposes of this subsection, the phrase

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"significant financial impact" shall mean a financial impact to the state in any state fiscal year prior to and including the first state fiscal year of full implementation, including requiring the Legislature to increase taxes or fees in order to maintain the state budget at existing revenues and expenditures, in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the State general revenue fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year prior to the election in which such proposed amendment or revision is considered. The determination of whether a proposed amendment or revision imposes a significant financial impact on state government shall be made and certified in accordance with general law. Any such proposed amendment or revision that fails to gain the two-thirds vote required by this subsection shall be null, void, and without effect.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE XI, SECTION 7

TWO-THIRDS VOTE FOR AMENDMENT INCREASING STATE TAX OR FEE OR IMPOSING A SIGNIFICANT FINANCIAL IMPACT.— Under this measure proposing to amend the State Constitution, a proposed amendment or revision to the State Constitution that increases an existing state tax or fee would have to be approved by at least two-thirds of those voters voting in the election in which the amendment or revision is considered. For the purposes of this measure, "existing state tax or fee" means any tax or fee that produces revenue subject to lump-sum or other appropriation by the

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117 Legislature, either for the State general revenue fund or any
118 trust fund, if that tax or fee is in effect at the time of the
119 election when the proposed amendment or revision is considered.
120 This measure would also require that a proposed amendment or
121 revision to the State Constitution that would impose a
122 significant financial impact on state government must be approved
123 by at least two-thirds of those voters voting in the election in
124 which the amendment or revision is considered. For the purposes
125 of this measure, "significant financial impact" means a financial
126 impact to the state in any state fiscal year prior to and
127 including the first state fiscal year of full implementation,
128 including requiring the Legislature to increase taxes or fees in
129 order to maintain the state budget at existing revenues and
130 expenditures, in an amount greater than two-tenths of one percent
131 of the portion of the state budget appropriated from the State
132 general revenue fund, as established in the General
133 Appropriations Act approved by the Governor, for the state fiscal
134 year ending in the year prior to the election in which such
135 proposed amendment or revision is considered. The determination
136 of whether a proposed amendment or revision imposes a significant
137 financial impact on state government would be made and certified
138 in accordance with general law. This measure adds to an existing
139 provision of the Florida Constitution, passed by Florida voters
140 in 1996, that currently applies the same two-thirds vote
141 requirement only to a proposed amendment that imposes a new state
142 tax or fee. All other proposed amendments or revisions presently
143 must be approved by only a simple majority of those voting on the
144 proposal. The measure also makes conforming changes in this

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145 | section of the State Constitution and repeals obsolete provisions
146 | relating to items on the November 8, 1994, ballot.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS



BILL #: HJR 39

Limitations on Assessments of Residential and Commercial Property

SPONSOR(S): Farkas

TIED BILLS:

IDEN./SIM. BILLS: SJR 22

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee		Hogge 	Hogge 
2) Local Government Council			
3) Finance & Tax Committee			
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

This House Joint Resolution proposes to amend Article VII, section 4 of the State Constitution by extending the so-called "Save Our Homes" limitation on annual increases in the assessed value of homestead property to "all residential or commercial property." As a result, the annual assessed value of residential or commercial property, not just homestead property, could not be increased more than 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less.

If approved by the voters and if market values continue to outpace the proposed assessment cap, the extension of the "Save Our Homes" limitation to all residential and commercial property would reduce the growth in total assessed property values and, as a result, reduce the amount of ad valorem property taxes billed to property owners, unless a local government were to adopt a corresponding increase in the millage rate to offset the likely reductions in the growth in total assessed values. However, if a local government is unable to offset the reductions in growth by increasing the millage rate because of a lack of millage capacity, property owners would experience reduced property taxes. Many small rural counties have no available millage capacity and would be among those local governments unable to increase their millage rates to compensate for losses resulting from an extension of the cap on assessed values to property other than homesteads. For others that do have available millage capacity, that capacity is likely to be quickly outstripped by the reduction in the growth of total taxable values.

However, in proposing this change, the joint resolution is drafted in a manner that may actually have the effect, apparently unintended, of increasing the assessed value of homestead property currently benefiting from the assessment cap by requiring a rebalancing of the assessed values of all residential and commercial property as of January 1 of the year following the effective date of this proposed constitutional amendment. Without a corresponding millage rate reduction, this rebalancing would have the effect of increasing the amount of ad valorem property taxes paid by those property owners whose homesteads are reassessed.

This proposal is expected to have a significant adverse fiscal impact on local governments.

See Section II.B.1. of this analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill implicates the following House Principle:

Ensure lower taxes—

If approved by the voters and if market values continue to outpace the proposed assessment cap, the extension of the “Save Our Homes” limitation from homestead¹ to all residential and commercial property would reduce the growth in total assessed property values and, as a result, reduce the amount of ad valorem property taxes billed to property owners, unless a local government adopted a corresponding increase in the millage rate to offset the likely reductions in the growth in total assessed values. However, if a local government is unable to offset these reductions by increasing the millage rate because of a lack of millage capacity, property owners would experience reduced property taxes. Many small rural counties have no available millage capacity and would be among those local governments unable to increase their millage rates to compensate for losses resulting from an extension of the cap on assessed values to property other than homesteads. For others that do have available millage capacity, that capacity is likely to be quickly outstripped by the reduction in the growth of total assessed values.

However, though apparently not intended by the sponsor, this proposal could result in increased taxes. By amending Art. VII, section 4(c) of the State Constitution to require commercial property to also be assessed at just value as of January 1 of the year following the “effective date of this amendment,” this proposal could have the effect of subjecting all homestead property currently assessed below market value to be reassessed at current market values (in effect losing the benefit of their accrued constitutionally provided assessment cap). Absent a corresponding millage rate reduction, this would have the effect of increasing the amount of ad valorem property taxes paid by certain property owners.

B. EFFECT OF PROPOSED CHANGES:

Background

Ad valorem property taxes are the single largest source of tax revenues for general purpose local governments in Florida. In FY 2002-03, the last year for which fiscal information is available, property taxes accounted for 31 percent of county governmental revenue (\$6.3 billion), and almost 20 percent of municipal government revenue (\$2.4 billion). Ad valorem property tax revenues also are the primary local revenue source for school districts. For that same fiscal year, school districts levied \$8.4 billion in property taxes.

Ad valorem property tax revenues result from multiplying the millage rate adopted by counties, municipalities, and school boards by the taxable value of property within that jurisdiction. Each entity may levy up to 10 mills and, in most cases, the real property must be assessed at just value.² Article VII, s. 6 of the State Constitution authorizes a \$25,000 ad valorem property tax exemption for homestead property.

¹ That is, real property owned by a taxpayer and used as the owner's permanent residence or the permanent residence of another who is legally or naturally dependent upon the owner.

² “Just value” is the estimated market value of the property. “Assessed value” is generally synonymous with “just value” unless a constitutional exception such as Save Our Homes applies to reduce the value of the property. “Taxable value” is the assessed value minus any applicable exemptions such as the \$25,000 homestead exemption.

In 1992, Florida voters approved the so-called "Save Our Homes" amendment to the State Constitution. This amendment limits the annual growth in the assessed value of homestead property to 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less. It does not limit assessment increases for other types of property such as non-homestead residential, commercial, or industrial property. This has produced valuation differentials for tax purposes among properties having similar market values. The "Save Our Homes" exception is one of several exceptions to the just value requirement found in Article VII, s. 4 of the State Constitution.³

Largely due to the recent surge in housing values⁴ and lack of corresponding millage rate reductions by local officials to offset double-digit increases in taxable values, ad valorem property tax revenues have increased substantially in recent years: 9.2 percent in 2002, 11.5 percent in 2003, and 10.4 percent in 2004.⁵ These annual property tax increases are twice as high as the 5 percent average increase experienced between 1991 and 2000, but comparable to the 12.5 percent average annual increase from 1981 to 1990.⁶ Despite the growth in total taxable values, the statewide average actual millage rates have remained relatively unchanged, although on a generally downward trend.⁷ However, the differential between the actual millage rate and the so-called "roll back rate" (i.e., millage rate necessary to generate the same amount of revenue as the prior year excluding new construction and boundary changes) is substantially more pronounced since 2000, then it was from 1990 to 1999.

The taxable value of all real property has increased 53 percent over the past four years.

The amount of value removed from the tax rolls from the "Save Our Homes" provision is growing at a much faster rate than the amount of value removed by the homestead exemption. For example, in 2005, the amount of value excluded from the tax rolls as a result of the Save Our Homes provision grew by \$81 billion over the previous year compared to \$1.7 billion removed as a result of the homestead exemption.

Proposed Change

This House Joint Resolution would propose to amend Article VII, s. 4 of the State Constitution by extending the limitation on annual increases in the assessment of all homestead property to all residential or commercial property. As a result, changes in the assessed value of residential or commercial property, and not just homestead property, could not exceed 3 percent of the assessment for the prior year or the percentage change in the U. S. Consumer Price Index, whichever is less.

C. SECTION DIRECTORY:

Not applicable.

³ These include exceptions for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Tangible personal property that is held as inventory may also be assessed at a specified percentage of its value or totally exempted. Additionally, counties and cities may be authorized to assess historical property based solely on the basis of its character or use, without regard to just value. The Legislature also has provided for differential treatment of specific property, to include pollution control devices and building renovations for the physically handicapped.

⁴ The boom in housing values does not translate into an identical increase in "just values" or "assessed values" since not all property is taxed at "just value." "Just values" have experienced double-digit increases since 2001: 10.6% in 2001; 11.3% in 2002; 12.4% in 2003; and 14.0% in 2004. For the period 1990-2000, the largest increase was 8.3%, with two years, 1992 and 1993, experiencing an increase of only 2.0%. Although not as large, the growth in "taxable values" resulted in a similar experience.

⁵ "Taxes Levied and Millage Rates 1974-2004," from 2006 Property Tax Roll Estimates prepared by the Revenue Estimating Conference, November 8, 2005. The amount of ad valorem property tax levied for 2005 is not yet available, but the value of property subject to the tax increased by approximately 20%.

⁶ Id.

⁷ Actual average millage rates for all jurisdictions for 2004—20.18; for 2003—20.60; for 2002—20.57. Excluding public school levies for 2004—11.96; for 2003—12.06; for 2002—11.93.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Ad valorem taxes are the primary revenue source for school districts. Because this bill applies the limits on assessed value to additional properties, it would also limit the amount of revenue generated from property taxes for school purposes, absent an adjustment in the millage rates. As such, the state might have to supply an increasing amount of support for the school system if the necessary funds could not be generated at the local level.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This proposal is expected to have a significant adverse fiscal impact on local governments, necessitating reductions in expenditures and/or an increase in millage rates (in those jurisdictions where that capacity exists) to maintain current property tax revenues. Although requested by staff, the Special Impact Session of the Revenue Estimating Conference has not yet rendered an official estimate of the fiscal impact. Unofficially, however, very preliminary staff estimates suggest a statewide reduction in property tax revenues of \$1.14 billion in 2006, followed by a \$2.33 billion and \$3.58 billion reduction in 2007 and 2008, respectively. For purposes of perspective, total property taxes levied statewide in 2004 were \$22.4 billion. These revenue reductions result from a projected reduction in the tax base of \$56.76 billion in 2006, growing to \$392.34 billion in 2011.

2. Expenditures:

This proposal would have no direct effect on expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If approved by the voters and if market values continue to outpace the proposed assessment cap, the extension of the "Save Our Homes" limitation from homestead to all residential and commercial property would reduce the growth in total assessed property values and, as a result, reduce the amount of ad valorem property taxes billed to property owners, unless a local government adopted a corresponding increase in the millage rate to offset the likely reductions in the growth in total assessed values. However, if a local government is unable to offset these reductions by increasing the millage rate because of a lack of millage capacity, property owners would experience reduced property taxes. Many small rural counties have no available millage capacity and would be among those local governments unable to increase their millage rates to compensate for losses resulting from an extension of the cap on assessed values to property other than homesteads. For others that do have available millage capacity, that capacity is likely to be quickly outstripped by the reduction in the growth of total assessed values.

However, though apparently not intended by the sponsor, this proposal could result in increased taxes. By amending Art. VII, section 4(c) of the State Constitution to require commercial property to also be assessed at just value as of January 1 of the year following the "effective date of this amendment," this proposal could have the effect of subjecting all homestead property currently assessed below market value to be reassessed at current market values (in effect losing the benefit of their accrued constitutionally provided assessment cap). Absent a corresponding millage rate reduction, this would have the effect of increasing the amount of ad valorem taxes paid by certain property owners.

Since this proposal would bring commercial property under the limitation on assessed values, commercial property would for the first time enjoy the benefit of the assessment limitation.

D. FISCAL COMMENTS:

The fiscal impact statements do not take into account the apparently unintended rebalancing that could occur based on the way in which the proposal is drafted. See discussion at Section III.C. of this analysis.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply to House Joint Resolutions.

2. Other:

Article XI, Section 1 of the State Constitution provides the Legislature with the authority to propose amendments to the State Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Critics of the existing constitutional provision—the so-called “Save Our Homes” amendment—point to the disparities it can produce in assessed values between properties of equivalent market values. For example, for two homes with a market value of \$250,000, the assessed value of one may be \$100,000, and for another, \$175,000. This can result in one homeowner paying substantially more in property taxes as a percentage of their respective market values. Without a similar cap on other non-homestead properties, it can also result in other property owners having to pay disproportionately more in taxes due to taxable values closer to true market values.

This proposal could have consequences apparently not intended by the sponsor; that is, by amending Art. VII, section 4(c) of the State Constitution to require commercial property to also be assessed at just value as of January 1 of the year following the “effective date of this amendment,” this proposal could have the effect of subjecting all homestead property currently assessed below market value to be reassessed at current market values (in effect losing the benefit of their accrued “Save Our Homes” cap). Absent a corresponding millage rate reduction, this would have the effect of increasing the amount of ad valorem taxes paid by certain property owners.

In what appears to be a strictly technical drafting issue, the proposal uses the disjunctive “or” in referring to the type of property, i.e., residential “or” commercial, subject to the general just value assessment requirement. Given the context, the conjunctive “and” seems more appropriate since the provision is referencing the universe of property affected by the requirement.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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House Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article VII of the State Constitution relating to limitations on assessments of residential and commercial property.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 4 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.--By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(c) All residential or commercial property persons ~~entitled to a homestead exemption under Section 6 of this~~

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2006

Article shall be ~~have their homestead~~ assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.

(1) Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, residential or commercial ~~homestead~~ property shall be assessed at just value as of January 1 of the following year. Thereafter, the property ~~homestead~~ shall be assessed as provided herein.

(4) New residential or commercial ~~homestead~~ property shall be assessed at just value as of January 1st of the year following the completion of construction ~~establishment~~ of the property ~~homestead~~. That assessment shall only change as provided herein.

(5) Changes, additions, reductions, or improvements to residential or commercial ~~homestead~~ property shall be assessed as provided for by general law; provided, however, after the

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adjustment for any change, addition, reduction, or improvement,
the property shall be assessed as provided herein.

~~(6) In the event of a termination of homestead status, the
property shall be assessed as provided by general law.~~

(6)~~(7)~~ The provisions of this amendment are severable. If
any of the provisions of this amendment shall be held
unconstitutional by any court of competent jurisdiction, the
decision of such court shall not affect or impair any remaining
provisions of this amendment.

(d) The legislature may, by general law, for assessment
purposes and subject to the provisions of this subsection, allow
counties and municipalities to authorize by ordinance that
historic property may be assessed solely on the basis of
character or use. Such character or use assessment shall apply
only to the jurisdiction adopting the ordinance. The
requirements for eligible properties must be specified by
general law.

(e) A county may, in the manner prescribed by general law,
provide for a reduction in the assessed value of homestead
property to the extent of any increase in the assessed value of
that property which results from the construction or
reconstruction of the property for the purpose of providing
living quarters for one or more natural or adoptive grandparents
or parents of the owner of the property or of the owner's spouse
if at least one of the grandparents or parents for whom the
living quarters are provided is 62 years of age or older. Such a
reduction may not exceed the lesser of the following:

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83 (1) The increase in assessed value resulting from
84 construction or reconstruction of the property.

85 (2) Twenty percent of the total assessed value of the
86 property as improved.

87 BE IT FURTHER RESOLVED that the following statement be
88 placed on the ballot:


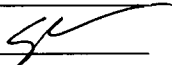
89 CONSTITUTIONAL AMENDMENT

90 ARTICLE VII, SECTION 4

91 LIMITATIONS ON ASSESSMENTS OF RESIDENTIAL AND COMMERCIAL
92 PROPERTY.--Proposing an amendment to the State Constitution to
93 apply to all residential and commercial property the limitations
94 on assessments of property at just value currently applicable
95 only to homestead property.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 139 Trespass on Railroad Property
SPONSOR(S): Mahon
TIED BILLS: None **IDEN./SIM. BILLS:** None

DIRECTOR	REFERENCE	ACTION	ANALYST	STAFF
1) Criminal Justice Committee		7 Y, 0 N	Cunningham	Kramer
2) Judiciary Committee			Hogge 	Hogge 
3) Justice Council				
4)				
5)				

SUMMARY ANALYSIS

Trespass is the unauthorized entry onto the property of another. In prosecuting trespass, the state must prove that the offender knew, or should have known, that entry onto the property is unauthorized. In regards to open lands (as opposed to buildings), a person knows not to enter the lands if told not to enter, or if "no trespassing" signs are posted. A person should know not to enter if the property is cultivated or fenced.

This bill provides that a person may be prosecuted for trespass onto railroad property even if the property is not fenced and does not have "no trespassing" signs posted. In effect, this bill provides that persons should know not to enter railroad property.

In general, trespass onto lands is a first degree misdemeanor.

This bill appears to have an insignificant fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill lessens the requirement that a railway company post signs in order to have the protection of the trespass law.

B. EFFECT OF PROPOSED CHANGES:

Florida's rail system stretches for 2,788 miles.¹ All but 81 of those miles are privately owned.² The Federal Railroad Administration (FRA) reports that trespasser deaths have decreased by 36.4% between 2002 and 2004.³ Florida is third in the nation for trespasser fatalities that occur on rail lines.⁴

Section 810.09, F.S., provides that it is a first degree misdemeanor to commit trespass on lands.⁵ The offense level is increased to a third degree felony in certain circumstances.⁶ Trespass on lands is when a person:

- willfully enters upon or remains in any property other than a structure or conveyance without being authorized⁷, licensed, or invited; and
- notice against entering is given by actual communication or by posting, fencing, or cultivation.⁸

"Posted land" is land upon which signs are placed no more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently the words "no trespassing."⁹ The unauthorized entry by any person into or upon any enclosed and posted land is prima facie evidence of the intention of such person to commit an act of trespass.¹⁰

The effect of these laws is that a person is not prosecuted for criminal trespass by simply wandering onto the open property of another. An offender must be given actual notice (e.g.

¹ 2004 Florida Rail System Plan, published by the Florida Department of Transportation (FDOT).

² The State of Florida, through the FDOT, owns the 81-mile stretch between West Palm Beach and Miami, with a branch to the Miami International Airport.

³ The Federal Railroad Administration Office of Safety Analysis reports that Florida had 33 trespasser deaths in 2002, and 21 trespasser deaths in 2004. Between January and July of 2005, there have been 25 trespasser deaths. See <http://safetydata.fra.dot.gov/officeofsafety/>.

⁴ <http://safetydata.fra.dot.gov/officeofsafety/>.

⁵ Trespass in a dwelling, structure or conveyance is considered a more serious offense.

⁶ It is a third degree felony if the offender is armed during the trespass; if the property trespassed is a posted construction site; if the property is posted as commercial property designated for horticultural products; if the property trespassed is posted as a designated agricultural site for testing or research purposes; or if a person knowingly propels any potentially lethal projectile over or across private land without authorization while taking, killing, or endangering specified animals. See ss. 810.09(2)(a)-(g), F.S.

⁷ "Authorized" means any owner, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner or agent to communicate an order to leave the property in the case of a threat to public safety or welfare. Section 810.09(3), F.S.

⁸ See s. 810.09(1)(a), F.S. Trespass can also occur if the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

⁹ See s. 810.011(5)(a), F.S.

¹⁰ See s. 810.12, F.S.

direct communication) or constructive notice (e.g. posting) that entry is not authorized.¹¹ The law presumes that individuals know or should know that they are not authorized to enter fenced or cultivated lands.

Generally, the only duty owed by a railroad company to a trespasser on its property is not to harm the trespasser willfully or wantonly or to expose the trespasser to danger recklessly or wantonly.¹² Once the presence of a trespasser is known, the railroad company must exercise ordinary care to avoid injury to him.¹³

A landowner owes less of a duty of care to an unknown licensee or to a trespasser, than they do to an invitee. "The unwavering rule as to a trespasser is that the property owner is under the duty only to avoid willful and wanton harm to him and upon discovery of his presence to warn him of known dangers not open to ordinary observation."¹⁴ The duty owed by a landowner to an uninvited "licensee or discovered trespasser is essentially the same: to avoid willful and wanton harm to him, and to warn him of defect or condition known by the landowner to be dangerous when such danger is not open to ordinary observation by licensee or trespasser."¹⁵

Effect of Bill

This bill provides that, for purposes of prosecution for trespass, posting is not required for lands that contain stationary rails or roadbeds¹⁶ that are owned or leased by a railroad or railway company if the property is:

- readily recognizable to a reasonable person as being the property of a railroad or railway company, or
- identified by conspicuous fencing or signs indicating that the property is owned or leased by a railroad or railway company.

Thus, this bill provides that in order for the state to prove that an individual trespassed upon railroad property, the state does not have to offer proof that notice was given.

C. SECTION DIRECTORY:

Section 1 amends s. 810.011, F.S., to provide an alternative to posting requirements.

Section 2 re-enacts s. 810.09, F.S., to incorporate the reference to s. 810.011, F.S.

Section 3 provides an effective date of October 1, 2006.

¹¹ See *K.S. v. State*, 840 So.2d 1116 (Fla. 1st DCA 2003).

¹² See *Louisville & N.R. Co. v. Holland*, 79 So.2d 691 (Fla. 1955).

¹³ See *Atlantic Coast Line R. Co. v. Webb*, 112 Fla. 449, 150 So. 741 (Fla. 1933).

¹⁴ See *Wood v. Camp*, 284 So.2d 691, 693-694 (Fla. 1973).

¹⁵ See *Morris v. Florentes, Inc.*, 421 So.2d 582, 583 (Fla. 5th DCA 1982).

¹⁶ The roadbed of a railroad is the foundation upon which the ties, rails, and ballast of a railroad are laid. See *The American Heritage Dictionary of the English Language*, Fourth Edition.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The 2004 Criminal Justice Estimating Conference determined that this bill had an insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

If the railroad companies elected to post "No Trespassing" signs, it would require more than 58,000 signs.¹⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

¹⁷ There are 2,788 miles of railway. Signs are required to be no more than 500 feet apart, which would require approximately 10.5 signs per mile. Multiplying 29,274 times two (both sides of the tracks) yields 58,548.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a

1 A bill to be entitled

2 An act relating to trespass; amending s. 810.011, F.S.;
3 providing that property that is owned or leased by a
4 railroad or railway company does not have to satisfy the
5 definition of "posted land" in order to obtain the
6 benefits of ss. 810.09 and 810.12, F.S., in certain
7 circumstances; reenacting s. 810.09(1)(a), F.S., relating
8 to trespass on property other than structure or
9 conveyance, for the purpose of incorporating the amendment
10 to s. 810.011, F.S., in a reference thereto; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsection (5) of section 810.011, Florida
16 Statutes, is amended to read:

17 810.011 Definitions.--As used in this chapter:

18 (5)(a) "Posted land" is that land upon which signs are
19 placed not more than 500 feet apart along, and at each corner
20 of, the boundaries of the land, upon which signs there appears
21 prominently, in letters of not less than 2 inches in height, the
22 words "no trespassing" and in addition thereto the name of the
23 owner, lessee, or occupant of said land. Said signs shall be
24 placed along the boundary line of posted land in a manner and in
25 such position as to be clearly noticeable from outside the
26 boundary line.

27 (b) It shall not be necessary to give notice by posting on
28 any enclosed land or place not exceeding 5 acres in area on

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29 which there is a dwelling house in order to obtain the benefits
30 of ss. 810.09 and 810.12 pertaining to trespass on enclosed
31 lands.

32 (c) It shall not be necessary to give notice by posting as
33 required in paragraph (a) on any stationary rails or roadbeds
34 that are owned or leased by a railroad or railway company and
35 are:

36 1. Readily recognizable to a reasonable person as being
37 the property of a railroad or railway company; or

38 2. Identified by conspicuous fencing or signs indicating
39 that the property is owned or leased by a railroad or railway
40 company

41
42 in order to obtain the benefits of ss. 810.09 and 810.12
43 pertaining to trespass on enclosed and posted land.

44 Section 2. For the purpose of incorporating the amendment
45 to section 810.011, Florida Statutes, in a reference thereto,
46 paragraph (a) of subsection (1) of section 810.09, Florida
47 Statutes, is reenacted to read:

48 810.09 Trespass on property other than structure or
49 conveyance.--

50 (1)(a) A person who, without being authorized, licensed,
51 or invited, willfully enters upon or remains in any property
52 other than a structure or conveyance:

53 1. As to which notice against entering or remaining is
54 given, either by actual communication to the offender or by
55 posting, fencing, or cultivation as described in s. 810.011; or

56 2. If the property is the unenclosed curtilage of a

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57 dwelling and the offender enters or remains with the intent to
58 commit an offense thereon, other than the offense of trespass,
59
60
61 commits the offense of trespass on property other than a
62 structure or conveyance.

63 Section 3. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS


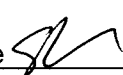
BILL #: HB 145

Apportionment of Damages in Civil Actions

SPONSOR(S): Brown

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee		Hogge 	Hogge 
2) Justice Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill would repeal the last vestiges of joint and several liability in apportioning economic damages in negligence cases in favor of a comparative fault approach. As a result, one's degree of liability would be limited to one's degree of fault (e.g., a defendant 10 percent at fault would be 10 percent liable for damages). This would complete a trend begun by the Legislature in 1986 and continued in further reforms in 1999.

The bill would take effect upon becoming a law, but would apply only to those causes of action accruing on or after the effective date. A cause of action accrues on the date of the incident or occurrence of injury or damage to the plaintiff.

At common law, the doctrine of joint and several liability developed concurrently with the doctrine of contributory negligence. In its purest form, liability that is "joint" and "several" renders each party at fault individually liable for an entire judgment awarded to a plaintiff, regardless of the individual's percentage of fault. It effectively renders each defendant a guarantor of the obligation of all persons found to be at fault for a particular injury, allowing the plaintiff to recover from one or any combination of persons at fault. The doctrine has evolved from the pure form over time with states varying in the way in which they assign liability. Several states have abolished joint and several; some have retained or abolished it except as to certain torts, some have linked it to the degree of plaintiff fault, others have abolished it as to particular types of damages (e.g., noneconomic).

Currently, in applying joint and several liability in negligence cases, Florida has drawn a distinction between economic and noneconomic damages, dispensing with it for noneconomic damages in favor of a comparative fault approach and retaining it in modified form for economic damages. For instance, Florida has eliminated joint and several liability against a defendant whose percentage of fault is less than that of a particular plaintiff or when a defendant is found to be 10 percent or less at fault as part of a tiered approach to its application.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill implicates the following House Principle:

Promote personal responsibility--

The bill reduces the ability of plaintiffs in negligence cases to recover economic¹ damages from persons or entities in amounts that exceed their degree of fault.

B. EFFECT OF PROPOSED CHANGES:

Proposed Changes

This bill would repeal the last vestiges of joint and several liability in apportioning economic damages in negligence cases in favor of a comparative fault approach. As a result, one's degree of liability would be limited to one's degree of fault, without regard to the degree of fault on the part of the plaintiff or defendant, or the amount of economic damages as determined by the finder of fact (i.e., jury or, in a non-jury action, judge), as currently provided under Florida law.²

The bill would take effect upon becoming a law, but would apply only to those causes of action accruing on or after the effective date. A cause of action accrues on the date of the incident or occurrence of injury or damage to the plaintiff.

Background

At common law, the doctrine of joint and several liability developed concurrently with the doctrine of contributory negligence. In its purest form, liability that is "joint" and "several" renders each party found to be at fault individually liable for an entire judgment in favor of a plaintiff, regardless of the individual's percentage of fault. It effectively renders each defendant a guarantor of the obligation of all persons found to be at fault for a particular injury, allowing the plaintiff to recover from one or any combination of persons at fault. As a result, although no longer the law in Florida, a party found to be 1 percent at fault could be required to pay 50 percent of the judgment.³ When this occurs, the paying party may have a right of contribution (i.e., partial reimbursement) and indemnity (i.e., full reimbursement) from the nonpaying parties. This form of liability is distinct from "several" liability in that liability that is "several" is separate and distinct from the liability of another. "Joint" liability is liability shared by two or more individuals or entities.

Joint and several liability in negligence cases has evolved from the pure form over time, with states varying in the way in which they assign liability. Several states have abolished joint and several; some have retained or abolished it except as to certain torts, some have linked it to the degree of plaintiff fault, others have abolished it as to particular types of damages (e.g., noneconomic).

¹ These include past lost income and future lost income reduced to present value, medical and funeral expenses, lost support and services, replacement value of lost personal property, loss of appraised market value of real property, costs of construction repairs...and any other economic loss which would not have occurred but for the injury giving rise to the cause of action. Fla. Stat. s. 768.81(1) (2005).

² Fla. Stat. s. 768.81(3) (2005).

³ Part of the impetus for this no longer being the law in Florida results from the oft-cited case of *Walt Disney World Co. v. Wood*, 515 So.2d 198 (Fla. 1987), in which Disney World was found to be 1 percent at fault, the plaintiff 14 percent at fault, and another person 85 percent at fault, yet the plaintiff was entitled to collect the entire award from Disney.

In 1986, the Legislature eliminated joint and several liability in negligence cases for noneconomic damages except in cases where the total amount of damages was \$25,000 or less,⁴ but preserved it for economic damages except when the defendant is found to be more at fault than the plaintiff. At the same time, the Legislature also codified the doctrine of comparative fault in negligence cases, first adopted by the Florida Supreme Court in 1973.⁵ Unlike under joint and several liability,⁶ under comparative fault, liability is apportioned directly in proportion to fault. Therefore, a person found to be 10 percent at fault is liable for 10 percent of the award. In addition, a plaintiff's award is reduced by the plaintiff's percentage of fault.

Currently, in applying joint and several liability in negligence cases, Florida has drawn a distinction between economic and noneconomic damages, dispensing with it for noneconomic⁷ damages in favor of a comparative fault approach and retaining it in modified form for economic damages. For instance, Florida has eliminated joint and several liability against a defendant whose percentage of fault is less than that of a particular plaintiff or when a defendant is found to be 10 percent or less at fault as part of the following tiered approach to its application:⁸

If Plaintiff is also at fault, each defendant is responsible as follows:

- Defendant 10% or less at fault = no j/s liability.
- Defendant 10% - 25% at fault = j/s liability limited to \$200,000.
- Defendant 25% - 50% at fault = j/s liability limited to \$500,000.
- Defendant more than 50% at fault = j/s liability limited to \$1,000,000.

If Plaintiff is not at fault, each defendant is responsible as follows:

- Defendant 10% or less at fault = no j/s liability.
- Defendant 10% - 25% at fault = j/s liability limited to \$500,000.
- Defendant 25% - 50% at fault = j/s liability limited to \$1,000,000.
- Defendant more than 50% at fault = j/s liability limited to \$2,000,000.

Comparative fault applies in negligence cases even in cases where the tortfeasor with the greatest percentage of fault is bankrupt or otherwise judgment proof.

In a significant decision construing the interrelationship between the doctrines of joint and several liability and comparative fault in negligence cases, the Florida Supreme Court ruled that a defendant could apportion fault to non-party wrongdoers.⁹ Specifically, the court held that fault must be apportioned among all responsible entities whether or not they were named or joined as defendants in the lawsuit (giving rise to the term "empty chairs"). This appears to be the position of a majority of states and apparently commentators.¹⁰ As one commentator characterized the issue:

⁴ Ch. 86-160, Laws of Florida.

⁵ *Hoffman v. Jones*, 280 So.2d 431 (Fla. 1973).

⁶ See Ch. 99-225, Laws of Florida. Prior to the 1999 repeal of the final vestiges of joint and several liability in apportioning noneconomic damages, the Legislature imposed a \$450,000 cap on compensatory damages as part of the Tort Reform Act of 1986. The Florida Supreme Court subsequently declared the cap unconstitutional on the grounds that it violated the right of access to the courts. See *Smith v. Dept. of Ins.*, 507 So.2d 1080 (Fla. 1987). The 1999 Act repealed the lone exception then existing to the application of joint and several liability—that being in cases where the total amount of damages was \$25,000 or less.

⁷ For example, pain and suffering, mental anguish, inconvenience, loss of capacity for enjoyment of life, and other non-pecuniary losses.

⁸ Fla. Stat. s. 768.81(3) (2005)

⁹ *Fabre v. Marin*, 523 So.2d 1182 (Fla. 1993).

¹⁰ *Apportionment of Damages: Evolution of a Fault-Based System of Liability for Negligence*, 61 J. Air L. & Com. 365, 378-379 (December 1995-January 1996). "In the absence of a specific statutory provision, courts have been virtually unanimous in holding that true apportionment cannot be achieved unless it includes all negligent parties, regardless of whether they are parties to the lawsuit." The commentator continued: "It appears that a majority of commentators support apportionment of damages to nonparties." Further in

...(those) who believe defendants should only be liable for their percentage of liability, argue that the negligence of nonparty tortfeasors must be considered in order to fairly determine the percentage of fault of named defendants.... Those who believe the primary focus should be on adequate compensation for the plaintiff argue that the fault of nonparties should not be considered.¹¹

The Florida Supreme Court later indicated¹² that in order for a non-party to be included on a jury verdict form, the defendant must plead the non-party's negligence as an affirmative defense and identify the non-party.¹³ In addition, the defendant has the burden of presenting evidence that the non-party's negligence contributed to the claimant's injuries. The *Fabre* holding has not been extended to the apportionment of fault between negligent and intentional tortfeasors.¹⁴

In 1999, the Legislature effectively codified the holding in both the *Fabre* and *Nash* decisions.¹⁵

C. SECTION DIRECTORY:

Section 1. Amends s. 768.81, F.S., repealing the use of joint and several liability in its entirety for the purpose of apportioning economic damages.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

the article at 381, the commentator noted that "in other jurisdictions where apportionment of fault to nonparties is permitted, statutes contain specific procedural safeguards, such as notice to plaintiffs and specific burdens of proof."

¹¹ *Id.* at 378.

¹² *Nash v. Wells Fargo Guard Services, Inc.*, 678 So.2d 1262 (Fla. 1996).

¹³ In *Clark v. Polk County*, 753 So.2d 138 (2d DCA 2000), Polk County argued that *Nash* did not require it literally to plead and prove the name of the nonparty tortfeasor. Rather, it maintained that it satisfied its burden by identifying a specific tortious act by a specific person, albeit a person whose name is unknown. The court indicated the position might have merit, as indirectly suggested by the Florida Supreme Court's decision in *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (Fla. 1997). The court found it "telling that the defendants' inability to furnish the assailant's name was not a basis for the court's decision. If *Nash* requires a defendant literally to furnish the name of the nonparty tortfeasor, it is curious that this requirement was not mentioned or applied in *McDonald*." As it turned out, the court found that "the circumstances in this case permit us to leave that question for another day."

¹⁴ *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (Fla. 1997).

¹⁵ Fla. Stat. 768.81((3)(d) and (e) (2005).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Although the specific monetary impact cannot be quantified in the absence of particular cases, to the extent private sector entities as defendants would otherwise be subject to payment of damages in excess of their degree of fault, they would benefit from an approach that limits one's degree of liability to degree of fault. However, the opposite is also true. To the extent private sector entities are plaintiffs with claims against defendants that might be unable to pay, limiting liability to fault may result in these entities not being made whole.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The National Conference of Commissioners on Uniform State Laws has promulgated three acts related to the apportionment of tort responsibility, with the first completed in 1939, the second in 1955, and the third in 1977. The latest act is the "*Uniform Apportionment of Tort Responsibility Act*" adopted in 2002.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 145

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A bill to be entitled
An act relating to apportionment of damages in civil
actions; amending s. 768.81, F.S.; deleting exceptions to
a requirement for liability based on percentage of fault
instead of joint and several liability; providing
applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 768.81, Florida
Statutes, is amended to read:

768.81 Comparative fault.--

(3) APPORTIONMENT OF DAMAGES.--In cases to which this
section applies, the court shall enter judgment against each
party liable on the basis of such party's percentage of fault
and not on the basis of the doctrine of joint and several
liability, ~~except as provided in paragraphs (a), (b), and (c):~~

~~(a) Where a plaintiff is found to be at fault, the
following shall apply:~~

~~1. Any defendant found 10 percent or less at fault shall
not be subject to joint and several liability.~~

~~2. For any defendant found more than 10 percent but less
than 25 percent at fault, joint and several liability shall not
apply to that portion of economic damages in excess of \$200,000.~~

~~3. For any defendant found at least 25 percent but not
more than 50 percent at fault, joint and several liability shall
not apply to that portion of economic damages in excess of
\$500,000.~~

29 ~~4. For any defendant found more than 50 percent at fault,~~
30 ~~joint and several liability shall not apply to that portion of~~
31 ~~economic damages in excess of \$1 million.~~

32
33 ~~For any defendant under subparagraph 2., subparagraph 3., or~~
34 ~~subparagraph 4., the amount of economic damages calculated under~~
35 ~~joint and several liability shall be in addition to the amount~~
36 ~~of economic and noneconomic damages already apportioned to that~~
37 ~~defendant based on that defendant's percentage of fault.~~

38 ~~(b) Where a plaintiff is found to be without fault, the~~
39 ~~following shall apply:~~

40 ~~1. Any defendant found less than 10 percent at fault shall~~
41 ~~not be subject to joint and several liability.~~

42 ~~2. For any defendant found at least 10 percent but less~~
43 ~~than 25 percent at fault, joint and several liability shall not~~
44 ~~apply to that portion of economic damages in excess of \$500,000.~~

45 ~~3. For any defendant found at least 25 percent but not~~
46 ~~more than 50 percent at fault, joint and several liability shall~~
47 ~~not apply to that portion of economic damages in excess of \$1~~
48 ~~million.~~

49 ~~4. For any defendant found more than 50 percent at fault,~~
50 ~~joint and several liability shall not apply to that portion of~~
51 ~~economic damages in excess of \$2 million.~~

52
53 ~~For any defendant under subparagraph 2., subparagraph 3., or~~
54 ~~subparagraph 4., the amount of economic damages calculated under~~
55 ~~joint and several liability shall be in addition to the amount~~
56 ~~of economic and noneconomic damages already apportioned to that~~

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57 ~~defendant based on that defendant's percentage of fault.~~

58 ~~(c) With respect to any defendant whose percentage of~~
59 ~~fault is less than the fault of a particular plaintiff, the~~
60 ~~doctrine of joint and several liability shall not apply to any~~
61 ~~damages imposed against the defendant.~~

62 (a)~~(d)~~ In order to allocate any or all fault to a
63 nonparty, a defendant must affirmatively plead the fault of a
64 nonparty and, absent a showing of good cause, identify the
65 nonparty, if known, or describe the nonparty as specifically as
66 practicable, either by motion or in the initial responsive
67 pleading when defenses are first presented, subject to amendment
68 any time before trial in accordance with the Florida Rules of
69 Civil Procedure.

70 (b)~~(e)~~ In order to allocate any or all fault to a nonparty
71 and include the named or unnamed nonparty on the verdict form
72 for purposes of apportioning damages, a defendant must prove at
73 trial, by a preponderance of the evidence, the fault of the
74 nonparty in causing the plaintiff's injuries.

75 Section 2. This act shall take effect upon becoming a law
76 and shall apply to causes of action that accrue on or after the
77 effective date.

AGENDA ITEM: THE APPROPRIATE SCOPE OF THE FLORIDA CONSTITUTION

Biographical sketch of scheduled presenters

James R. Eddy

Mr. Eddy has maintained a Civil Trial Law practice in Broward County for over forty years. He is a Florida Supreme Court Certified Family and Circuit Court Mediator and Arbitrator. He received a B.A. degree in Political Science from Duke University in 1954 and a J.D. degree from The University of Miami in 1959, where he was a contributor to the University of Miami Law Review. In 1963, he was elected to the Florida House of Representatives, representing Broward County at large for four consecutive terms. He became the House Minority (Republican) Floor Leader, the Minority Whip, Chairman of the Broward Delegation to the Legislature, and Chairman of the Drafting Committee of the Joint House & Senate Committee on the Constitution, which drew the 1968 Florida Constitution revision. Mr. Eddy has served as a Municipal Judge for Tamarac, Margate, and Lighthouse Point; City Attorney for Deerfield Beach; Legislative Counsel for Wilton Manors; and City Prosecutor for Pompano Beach.

Talbot “Sandy” D'Alemberte

President D'Alemberte represented Dade County in the Florida House of Representatives from 1966 to 1972, chaired several legislative committees including the Judiciary Committee that drafted and passed a major judicial reform constitutional amendment in 1972. He was Chairman of the Florida Constitution Revision Commission in 1977-1978 and the Florida Commission on Ethics in 1974-75, and has served on the Florida Supreme Court Nominating Commission. He received a J.D. degree from the University of Florida, with honors, in 1962. He is President Emeritus of The Florida State University, and served as President of the University from January 1994 to January 2003. From 1984 to 1989 he served as the fourth dean of The Florida State University College of Law. He was President of the American Bar Association for 1991-92. His book, *The Florida Constitution*, was published by Greenwood Press in 1991. He co-edited the 1990 four-volume work, *The Florida Civil Trial Guide*, and has authored over twenty published articles.

Robert F. Williams

Professor Williams is the Associate Director of the Center for State Constitutional Studies and a Distinguished Professor of Law at Rutgers University-Camden. Professor Williams has written extensively in state constitutional law and legislation, including casebooks in those areas and a book on New Jersey Constitutional Law. He also co-produced a television documentary marking the fiftieth anniversary of the New Jersey Constitution. He has been active as counsel in many public interest cases. Professor Williams received a B.A. degree, *cum laude*, from The Florida State University, and his J.D. degree, with honors, from the University of Florida, where he was Executive Editor of the Law Review. Professor Williams also received LL.M. degrees from New York University in 1970 and from Columbia University in 1980. At Rutgers, he teaches Civil Procedure, Legislation, State Constitutional Law, and New Jersey Constitutional Law.

Additional workshop materials can be found in the document:

“Background Materials for the Workshop on the Appropriate Scope of the Florida Constitution” located in the pocket of your meeting notebook.

This material is yours to keep.